

APPEAL NO. 041785
FILED SEPTEMBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 21, 2004. The hearing officer resolved the disputed issues by deciding that on _____, the respondent/cross-appellant (claimant) sustained a compensable injury; that the claimant had disability beginning on April 24 and continuing through April 30, 2002; and that the appellant/cross-respondent (self-insured) is not relieved from liability for benefits under Section 409.002. The self-insured appealed, disputing the injury and timely notice determinations. The appeal file did not contain a response from the claimant. The claimant also appealed, disputing the disability determination. The self-insured responded, urging affirmance of the disability determination.

DECISION

Affirmed.

The claimant attached documents to his appeal, some of which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The claimant had the burden to prove that he sustained a compensable mental trauma injury, that he had disability as defined by Section 401.011(16), and that he gave timely notice of injury to his employer pursuant to Section 409.001. Conflicting evidence was presented on the disputed issues at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant did sustain a compensable mental trauma injury; that he timely notified his employer pursuant to Section 409.001; and that he had disability beginning on April 24 and continuing through April 30, 2002, are

supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Although another fact finder could have drawn different inferences from the evidence of record, which would have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge